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BEFORE THE
Federal Communications Commission

WASHINGTON, D. C.

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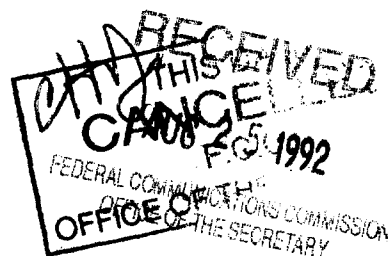
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's)
Regulations Governing Television)
Broadcasting)

MM Docket No. 91-221

To: The Commission

COMMENTS OF FOX INC.



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COMMENTS OF FOX INC.

Fox Inc. ("Fox") submits these Comments in response to the Commission's Notice of Proposed Rulemaking, FCC 92-209 (released June 12, 1992) ("NPRM"), in the above-captioned matter.

SUMMARY

Given the reality of unrestricted cable system and cable network ownership, Fox supports the Commission's modest proposals to take action to alleviate some of the antiquated regulatory restraints on television broadcasters. In particular, the public interest will be served by significant relaxation of the national and local multiple ownership limits and deletion of unnecessary restrictions on network activities.

Permitting attributable interests in television stations reaching less than 50% of the nation's households would not undermine the diversity and competition of the fragmented video marketplace, while it would encourage efficiencies of scale and investment in struggling stations. Because of the improved opportunities for capital infusions to struggling stations that otherwise might go dark, diversity

will increase. Additionally, if any numerical station limit is retained, it should be increased significantly.

Similarly, the duopoly rule should be reformed to allow broadcasters the economies of scale flowing from the operation of stations in adjacent markets. Because television stations compete for viewers and advertisers generally only within their Areas of Dominant Influence ("ADI"), the duopoly rule should be revised to allow co-ownership of stations so long as they are licensed to different ADI's. At the very least, if the Commission maintains a contour-overlap based rule, then it should be modified to prohibit only Grade A contour overlaps.

Even within the same ADI (or overlapping Grade A contours if that modification is adopted), limited joint ownership should be permitted for the traditionally weakest stations - UHF's. Ownership of two UHF stations, as long as six separately-owned stations remain in the market, could mean the difference between success -- and continued operation -- and failure -- and the loss of diversity and competition.

Although Fox would encourage the Commission to take further steps to eliminate unnecessary regulation of broadcast networks, it supports the limited relief offered in the NPRM -- repealing the dual network rule, as well as repealing the restrictions on network ownership of stations and the broadcast of programs of more than one network.

I. THE NATIONAL OWNERSHIP LIMITS SHOULD
 BE SIGNIFICANTLY RELAXED

The record in this proceeding overwhelmingly establishes that the video marketplace has been characterized by a proliferation of alternative sources of programming. With such a dynamic, diverse and competitive market, the Commission does not need to restrict television ownership to 12 stations and 25% audience reach to ensure diversity and economic competition. The fragmented video marketplace itself protects those goals. In the current video market, with even more competition on the horizon, 1/ a television broadcaster with 18, 20 or even 25 stations nationwide reaching up to 50% of television households would face so many alternative sources of programming that competition would continue to be vigorous and diversity would be essentially undiluted.

Not only are the present national ownership limits unnecessary in this diverse and competitive marketplace, but they impose undue regulatory burdens on an already struggling television industry. 2/ As noted in the NPRM, these

1/ Direct broadcast satellite and increased cable television channel capacity will only further increase the competition to over-the-air television.

2/ As the Commission is well aware from the study of its Office of Plans and Policy, the "broadcast television industry has suffered an irreversible long-term decline in audience and revenue shares, which will continue throughout the current decade." See F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996, 4097 (1991) ("OPP

[Footnote continued]

restrictions hinder television broadcasters from achieving the maximum efficiencies of joint operations. See NPRM at ¶ 11.

The national limits also restrict capital infusions to needy stations. Because non-controlling attributable interests count equally with controlling interests, investors are understandably hesitant to make equity contributions that will then limit other investment opportunities. Moreover, the numerical limit in particular discourages investors from making capital investments in smaller market stations because each such attributable investment, no matter how small, brings the investor closer to the 12-station ceiling, thereby foreclosing other, larger opportunities.

With significantly raised national limits, however, an investor could provide needed capital to several faltering stations. Because these stations -- particularly independents -- may otherwise face bankruptcy and go off-the-air, diversity is improved by fostering capital investment through multiple ownership interests. Dark stations simply do not contribute to diversity and competition. 3/ Nor do stations in financial

2/ [Footnote continued]

Report"). A recent study by the National Association of Broadcasters confirms that the broadcast industry is facing a continuing financial decline, with many stations, particularly independents, losing money. See National Association of Broadcasters, Television Financial Report (1992).

3/ For example, many Fox affiliates are UHF stations struggling to compete against major network affiliates and

[Footnote continued]

decline have the resources to improve their programming and public service efforts. Removing the current barrier to equity investment imposed by the overly-restrictive national limits serves the public interest by improving, not decreasing, diversity and economic competition.

Furthermore, the benefits of multiple ownership are available without restriction to cable operators, while broadcasters -- who provide the only free over-the-air service -- are unnecessarily regulated. If cable programmers such as Turner, Times-Warner and TCI can program video channels without restriction, or own as many cable systems as they choose, why should broadcasters be denied the same efficiencies and investment opportunities? Broadcasting has too long borne the burden of restrictive regulations while cable has flourished at broadcasters' expense. The preservation of broadcast television as a viable industry that provides free programming and serves the needs of the local community is a compelling public interest benefit warranting the relaxation of the national multiple ownership limits.

3/ [Footnote continued]

cable networks. With greater ability to hold attributable interests under relaxed national ownership limits, Fox and other established broadcasters could provide capital to such stations, allowing them to continue to operate. The alternative may well be no service at all -- with one less voice and competitor in the local market.

For the foregoing reasons, Fox supports a significant relaxation of the audience cap from the current 25% limit. Because of the extensive diversity of national and local programming services, broadcasters should be permitted to have ownership interests in stations serving less than 50% of television households. 4/

The diversity of the video marketplace also supports a substantial relaxation (e.g., to 25 stations) of the numerical station limit. The overall number of television stations has increased by over 50% between 1975 and 1990, with independent stations increasing more than four-fold. See OPP Study, 6 FCC Rcd at 4011. The number of over-the-air broadcast stations available to the median household increased from six to ten stations. Id. at 3999. In 1990, almost 90% of cable systems provided 30 or more channels. Id. at 4054. There are over 100 national and regional cable networks. NPRM at ¶ 3. This exponential growth in the video marketplace warrants this significant, but still restrictive, increase in the national limits. 5/

4/ The Commission should continue its current practice of attributing UHF stations with 50% of the households in their ADI market, to reflect their lesser market penetration. See 47 C.F.R. § 73.3555(d)(3)(i).

5/ Just because the Commission raises the national station limit to a particular number does not mean that many companies will increase their holdings to that level. Rather, licensees will experiment in response to marketplace factors in determining the number of stations that maximize the efficiencies and economies for their particular company.

II. THE DUOPOLY RULE SHOULD BE REVISED

As noted in the NPRM, increased competition in the video marketplace has improved diversity locally as well as nationally. See NPRM at ¶ 17. By limiting common ownership only to stations that do not have overlapping Grade B contours, the present duopoly rule unnecessarily restricts investment opportunities in adjacent markets. Instead, the Commission should adopt a market-by-market rule that permits joint ownership in stations licensed to distinct ADI's. Additionally, within each market, the Commission should permit joint ownership of two UHF stations, as long as there will remain at least six separately owned stations in the market.

The NPRM details the many economic efficiencies of permitting a single operator to own a second station in either an adjacent or same market, benefits that are currently denied most broadcasters by an overly-restrictive duopoly rule. See NPRM at ¶¶ 11, 17. Although the Commission has proposed amending the duopoly rule to permit co-ownership of stations with overlapping Grade B contours, so long as their Grade A contours do not overlap, that proposal does not wholly account for market realities. In practice, television stations compete for viewers and advertisers within their ADI. Advertisers are not interested in audience delivery outside of the ADI in which they are purchasing time. Thus, the ADI, not the Grade A contour, defines the station's true market. While in some areas the distinction may be without a practical significance,

in areas with adjacent metropolitan centers, a Grade A contour may enroach into another market, thereby limiting efficient investment opportunities.

In fact, there are numerous situations where certain stations in nearby markets would have slightly overlapping Grade A contours, even though the two markets are distinct and viewership in the other market is low. A few examples of such markets are: New York - New Haven/Hartford; Chicago - Milwaukee; Augusta, GA - Columbia, SC; Columbus - Dayton; and Richmond - Norfolk. Stations in two distinct markets, regardless of the overlap of Grade A contours, do not compete with each other for viewers and advertisers -- they compete only with other stations in their respective ADI's. Consequently, although reducing the prohibited overlaps from Grade B to A is preferable than the status quo, the real solution is to switch to a market-based rule, which prohibits joint ownership only within each ADI.

Additionally, even within the same market (or for stations with overlapping Grade A contours if that standard is adopted), co-ownership of two UHF stations should be permitted. At present, these stations are the most disadvantaged and therefore will most benefit from the economies of joint operation. The loss of a UHF station to financial failure only serves to remove a voice and competitor from the market. Moreover, UHF stations typically are the least dominant in the market, and therefore the combination of

two UHF stations would not significantly effect local market diversity or competition. However, because of the concentrated impact at the local level, such combinations should only be permitted when at least six separately owned stations would remain in the market after the combination. 6/

III. UNNECESSARY NETWORK RULES SHOULD BE ELIMINATED

In the NPRM, the Commission proposes the repeal of three restrictions on networks: the dual network rule (§ 73.658(g)); network ownership of certain stations (§ 73.658(f)); and broadcast of the programs of more than one network (§ 73.658(l)). Fox strongly supports the elimination of these network rules, which are unnecessary in today's marketplace and only put broadcast networks at a disadvantage as compared to cable networks.

These rules are outmoded restrictions which distort, rather than protect, the broadcasting market. For example, although cable programmers may and often do produce several different cable networks, the dual network rule serves to limit diversity and competition among broadcast networks by

6/ For these purposes, Fox proposes that each separately-owned station licensed to a community within the ADI would count towards the six-station minimum. As urged by Fox in its Reply Comments to the Notice of Inquiry in this proceeding (filed December 19, 1992), the Commission also should eliminate the remaining provisions of its cross-interest policy (concerning non-attributable equity interests, joint ventures, and key management personnel) in addition to its relaxation of the local ownership rule.

restricting each network to one programming stream. The current limitation on network ownership of certain small market television stations only prevents network investment in those stations most likely in need of capital in order to maintain operations. The rule prohibiting the broadcast of the programs of more than one network limits the options of networks and stations to determine which programming arrangements best meet their individual needs. Elimination of these unnecessary network rules will help broadcasters compete more effectively in today's and tomorrow's multi-channel video marketplace.

However, the Commission should not stop its reform at these network rules. As detailed in Fox's Comments on the Notice of Inquiry in this proceeding (filed November 21, 1991), the continuing constraints on broadcast networks imposed by other network rules are unjustified, particularly when cable networks face no such restrictions. ^{7/} These rules threaten the further development and growth of broadcast networks, and consequently, threaten free, universally available video programming, while encouraging new entrants towards non-broadcast distribution alternatives. The failure to even address these unnecessary network rules in this overall review of video regulations is contrary to the public interest. Fox encourages the Commission to apply the same rationale

^{7/} E.g., 47 C.F.R. § 73.658(a), (b), (d) and (e).

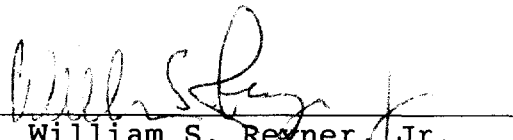
supporting the repeal of the three network rules to the repeal of other unnecessarily confining network rules.

CONCLUSION

For the foregoing reasons, Fox supports the reform of the ownership and network restrictions to reflect the current diversity and competitiveness of the video marketplace. The regulatory restrictions under review in this proceeding unduly hamper competitiveness and investment by broadcasters, thereby ultimately undermining diversity, economic competition, and the provision of free over-the-air service. Fox encourages the Commission to take these first steps to alleviate some of the unnecessary regulation now imposed upon broadcasters and networks.

Respectfully submitted,

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August 24, 1992

CERTIFICATE OF SERVICE

I, Tania M. Brown, a Legal Secretary with the law firm of Hogan & Hartson, hereby do certify that on this 24th day of August, 1992, I caused to be served by hand a copy of the foregoing "Comments of Fox Inc." addressed to the following:

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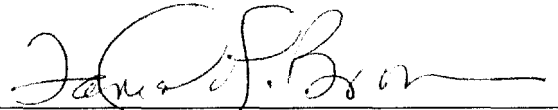
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A handwritten signature in cursive script, appearing to read "Tania M. Brown", written over a horizontal line.

Tania M. Brown